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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. ——

THE UNITED STATES, PETITIONER

v.

JAMES JOSEPH ROBERSON

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the United States Court of Claims entered in the above-entitled cause on November 30, 1954.

OPINIONS BELOW

The opinions of the Court of Claims are reported at 124 F. Supp. 857 and are reproduced in the Appendix, *infra,* pp. 1a–21a.

JURISDICTION

The judgment of the Court of Claims was entered on November 30, 1954, *nunc pro tunc* as of April 7, 1954. A timely motion for new trial was denied on February 8, 1955. The jurisdiction of this Court is invoked under 28 U. S. C. 1255.

QUESTIONS PRESENTED

1. Whether the Unjust Conviction Statute (28 U. S. C. 1495, 2513) establishes a right to damages for one who has been erroneously convicted by a military court-martial.

2. Whether the statutorily prescribed Certificate of Innocence can be issued by a court having jurisdiction to grant a writ of habeas corpus but lacking jurisdiction to review the merits of the conviction.

3. Whether the statutory action for damages for unjust conviction abates with the death of the claimant.[1]

STATUTES INVOLVED

Sections 1495 and 2513 of Title 28 of the United States Code provide as follows:

> Section 1495:
>
> The Court of Claims shall have jurisdiction to render judgment upon any claim for damages by any person unjustly convicted of an offense against the United States and imprisoned.

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[1] In addition to the three questions listed, a subsidiary jurisdictional issue was urged before the Court of Claims in the Government's motion for new trial. The Government argued that the Court of Claims was without jurisdiction to entertain Roberson's action on the ground that he was convicted by an Air Force court-martial of desertion in time of war and has therefore lost the right of a citizen to sue in the Court of Claims. 8 U. S. C. 1481 (a) (8); 28 U. S. C. 2502. This question will not be discussed in this petition although it is involved in the case.

Section 2513:

(a) Any person suing under section 1495 of this title must allege and prove that:

(1) His conviction has been reversed or set aside on the ground that he is not guilty of the offense of which he was convicted, or on new trial or rehearing he was found not guilty of such offense, as appears from the record or certificate of the court setting aside or reversing such conviction, or that he has been pardoned upon the stated ground of innocence and unjust conviction and

(2) He did not commit any of the acts charged or his acts, deeds, or omissions in connection with such charges constituted no offense against the United States, or any State, Territory, or the District of Columbia, and he did not by misconduct or neglect cause or bring about his own prosecution.

(b) Proof of the requisite facts shall be by a certificate of the court or pardon wherein such facts are alleged to appear, and other evidence thereof shall not be received.

(c) No pardon or certified copy of a pardon shall be filed with the Court of Claims unless it contains recitals that the pardon was granted after applicant had exhausted all recourse to the courts and that the time for any court to exercise its jurisdiction had expired.

(d) The Court may permit the plaintiff to prosecute such action in forma pauperis.

(e) The amount of damages awarded shall not exceed the sum of $5,000.

STATEMENT

On October 7, 1942, James Roberson enlisted in the United States Navy where he served until October 3, 1945 (R. 1, 9, 30).[2] Nine months later, on July 9, 1946, he reenlisted for a two year term (R. 9, 30). On December 1, 1947, approximately seven months before the expiration of this term of enlistment, Roberson sought to reenlist again under the provisions of a newly established program (R. 9–10, 30). The program provided that any person whose enlistment period was within six months of completion could reenlist immediately and receive a 30-day leave, the cost of transportation to and from his home, and a $50 bonus for each year of his service (Tr. 15–16). In an attempt to comply with the program and failing to recognize that more than six months of his enlistment period remained, Roberson's superiors accepted his reenlistment application and issued him an honorable discharge, so as to terminate his prior enlistment period (R. 9–10, 30).

However, three days later when Roberson returned from a 3-day pass and appeared before

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[2] References to the printed record in the Court of Claims are indicated (R. ——); references to the typewritten transcript of testimony in the Court of Claims are indicated (Tr. ——); references to the opinions of the judges of the Court of Claims, set forth *infra*, are indicated (App. ——).

his personnel officer to obtain permission to depart on his 30-day furlough, he was informed that his reenlistment had not been authorized by Navy regulations and was therefore void. The officer told Roberson that he had torn up the reenlistment papers (Tr. 16, 50), and when Roberson "expressed himself more forcefully than Navy custom sanctions in exchanges between enlisted men and commissioned officers" (R. 10, 30), the officer ordered him to return to his barracks, to consider himself under barracks arrest, and to await a test for intoxication (R. 10, 30).[3] Instead of complying with these orders, Roberson returned to his barracks and packed all of his belongings, including the honorable discharge which had been issued to him three days earlier. He then left the base without asking permission of anyone and returned to his home in Indiana. (R. 10, 30.)

Two months later, after receiving notice from the Navy that he was listed as a deserter, Roberson went to the Naval Recruiting Station at Sioux City, Iowa, to determine the validity of his discharge (Tr. 18, 95).[4] The recruiting officer con-

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[3] Roberson testified that he had been drink beer at an all-night pinochle game on the previous night (R. 10, 30; Tr. 58).

[4] Shortly after his arrival home in Indiana, the Roberson family moved to Iowa. This change of address appears to have caused the Navy's delay in locating Roberson and in informing him of his listed status as a deserter. (Tr. 17, 57, 94–95.)

tacted Roberson's commanding officer and headquarters in Washington, and learned that the Navy considered his discharge to be without effect (Tr. 19). Therefore, pursuant to instructions Roberson was arrested and was returned to Great Lakes Naval Training Station for trial (Tr. 19–20). On March 26, 1948, he was tried and convicted on charges of "drunkenness, disobeying the lawful order of his superior officer, desertion, conduct to the prejudice of order and discipline, breaking arrest, and unauthorized absence" (R. 9, 30). The court-martial sentenced him to a dishonorable discharge and 4 years of confinement, but, upon review, the Secretary of the Navy reduced the sentence to a bad conduct discharge and two years of confinement (R. 10, 30). Roberson was imprisoned at Norfolk, Virginia, and later at Portsmouth, New Hampshire, from March 26, 1948 to December 15, 1948 (10, 31). On the latter date, he was restored to active duty on six-months probation so long as his conduct remained satisfactory (R. 10, 31).

Upon his release he was sent to Boston for service; however, as soon as he reached Boston, he took his belongings and once again left for home, without notifying anyone, relying upon the validity of the honorable discharge issued on December 1, 1947 (10, 31). Two months later, Roberson, fearing that the FBI or the Navy would find him and return him to confinement, enlisted in the Air Force (Tr. 24, 66). After three weeks

service, he learned that "someone was at the office looking for" him; he was "afraid that they were going to send [him] back to confinement, and [he] took off from the Air Force" (Tr. 67). On September 19, 1949, Roberson was arrested by the naval authorities, charged with desertion, and imprisoned until December 8, 1949 (R. 10, 31). He was released upon order of the United States District Court for the Northern District of Illinois under a writ of *habeas corpus*. The district court issued the writ on the ground that the Navy court-martial lacked jurisdiction to try Roberson for offenses allegedly committed after the granting of the honorable discharge of December 1, 1947. (R. 10, 31.)

One month thereafter, he was arrested by the Air Force and was tried and convicted of desertion by a court-martial (Tr. 28, 69). He was sentenced to six-months confinement and a dishonorable discharge. After five-months imprisonment, he was sent back to active duty on probation, and his dishonorable discharge was suspended (Tr. 28, 69). In August 1951, he was court-martialed for a subsequent absence without leave and sentenced to 45-days confinement (Tr. 70). Upon his return to duty, he "went up and asked the Air Force if [he] could get [his] dishonorable discharge" (Tr. 30); such a discharge was ordered and he departed again (Tr. 30, 71–72).

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Returning to the District Court for the Northern District of Illinois, he sought a certificate of innocence, pursuant to 28 U. S. C. 2513 (*supra*, pp. 3–4), on the strength of the *habeas corpus* order issued by that court in December 1949. The district court reviewed the facts of his conviction by the Navy court-martial in its opinion (Deft's Ex. 1 in record filed with this Court, App., *infra*, pp. 21a–23a) and issued a certificate of innocence, apparently without having taken any additional evidence. The certificate (which was incorporated in the opinion) reads in part as follows (R. 10–11, 31):

> NOW THEREFORE, pursuant to said Section 2513 of Title 28, I hereby certify that the relator was not guilty of the offenses of which he was convicted, and for which he served confinement for eight months, and that said conviction was set aside by this Court and held to be void, and that the acts, deeds or omissions of the relator in connection with such charge constituted no offense against the United States, or any State, Territory or the District of Columbia, and that the relator did not by his misconduct or negligence cause or bring about his own prosecution.

The present action was brought in the Court of Claims on April 8, 1952. In his petition for relief (R. 1–5), Roberson set forth the history of his Navy court-martial and claimed $5,000

damages; he attached the above-quoted certificate as an exhibit. The Government's answer (R. 7–8) admitted the factual averments, but denied that the Navy conviction had been "set aside [or] held to be void on the ground that the plaintiff was not guilty of the offenses of which he was convicted" (see R. 5), and denied that the certificate of the Illinois court was sufficient to give the Court of Claims jurisdiction under 28 U. S. C. 1495, 2513. Although the testimony taken before the Commissioner of the court below was intended to relate solely to the question of damages, Roberson's enlistment and desertion from the Air Force were also revealed therein. After the Commissioner had made his report, but before the court had rendered an opinion or entered judgment, Roberson died on July 28, 1954 (see Pltf's motion to substitute and attached exhibit in record filed with this Court), leaving his parents, brothers, and sisters as heirs.

Judge Littleton, writing for the court, ruled that the Unjust Conviction Statute does apply to persons sentenced by military courts-martial, that the certificate issued by the Illinois district court was valid even though that court's jurisdiction was initially limited to *habeas corpus* proceedings, and that Roberson was entitled to the maximum $5,000 recovery (App., *infra,* pp. 1a–14a). In a concurring opinion, Judge Whitaker, with whom Chief Judge Jones concurred, approved the

result reached by the majority even though "technically the *habeas corpus* court did not have the right to try plaintiff's guilt or innocence" (App. *infra*, pp. 14a–15a). His view was that the factual determination essential to the issuance of the writ by the Illinois court (*i. e.*, that the December 1, 1947, discharge was valid) effectively determined that the charges upon which Roberson had been tried by the Navy did not constitute offenses against the United States or any state. The charge of drunkenness was excluded from his consideration on the ground that "no doubt plaintiff would never have been charged with this offense had he not been charged with the others" (App., *infra*, p. 14a). Judge Madden dissented on the basis that the Illinois district court did not have jurisdiction over the merits of Roberson's conviction and was therefore not empowered to issue the statutory certificate of innocence (App., *infra*, pp. 15a–18a).

The Government then moved to vacate the judgment, contending that the action had abated when Roberson died, and Roberson's counsel moved to substitute Roberson's estate as plaintiff. Both motions were denied, and the court granted an alternative motion made by Roberson's attorney to withdraw the judgment and to reissue it *nunc pro tunc* as of April 7, 1954, a time at which Roberson was still alive (R. 37). The Government filed a motion for new trial on December 30, 1954, which was denied on February 8, 1955.

REASONS FOR GRANTING THE WRIT

1. In ruling that the Unjust Conviction Statute applies to persons convicted by military courts-martial, the Court of Claims extended its scope of application far beyond that which Congress intended.[5] As originally enacted, the Statute was entitled "An Act to grant relief to persons erroneously convicted in courts of the United States". Act of May 24, 1938, 52 Stat. 438. In the Senate report leading to its enactment the purpose was stated as giving relief to anyone "erroneously convicted in a Federal court" (see Sen. Rep. No. 202, 75th Cong., 1st Sess., p. 1), and the House report indicated that the purpose was to provide relief for innocent persons convicted "in the United States courts". See H. Rep. No. 2299, 75th Cong., 3d Sess., p. 2. In various contexts this Court has repeatedly ruled that military tribunals are not federal courts or courts of the United States. See, *e. g. Dynes* v. *Hoover,* 20 How. 65, 79; *Burns* v. *Wilson,* 346 U. S. 137, 140, 147, 844; see, also, the statutory definition in 28 U. S. C. 451. Neither in judicial practice nor in common parlance are courts-martial considered such courts. Indeed, the constitu-

[5] The sole authority relied upon by the court below as supporting the applicability of the Statute to military courts-martial was *McLean* v. *United States,* 73 F. Supp. 775 (W. D. S. C.). The decision in that case was on the Government's motion to dismiss. Since the plaintiff has never prosecuted his claim, the Government has been unable to appeal from this non-final order.

tional basis for military courts-martial is found in Article I ("To Make Rules for the Government and Regulation of the land and naval Forces") not in Article III. It is therefore reasonable to assume that Congress selected the carefully defined phrase "courts of the United States" with the knowledge of the meaning given it by past judicial interpretation and long-standing acceptance. Cf. *Case* v. *Los Angeles Lumber Co.*, 308 U. S. 106, 115. In 1948, the Statute was reenacted and codified in its present form as 28 U. S. C. 1495, 2513. The minor changes in wording then effected were made, according to the reviser's notes, "to clarify ambiguities which made the statute unworkable as enacted originally." See Appendix to H. Rep. No. 308, 80th Cong., 1st Sess., p. 139. Certainly, this does not indicate such a comprehensive change as adding all military tribunals to the scope of its application.

There was good reason for Congress to limit this statutory right to those convicted by judicial courts. The power to sue for damages for wrongful imprisonment would clearly have special consequences for the maintenance of military discipline, especially since servicemen subjected to court-martial ordinarily remain in the service. For a comparable reason, this Court has recognized an implied exception in the Federal Tort Claims Act, preventing suit for torts suffered

while on active military duty. *United States* v. *Brown,* 348 U. S. 110, 112; *Feres* v. *United States,* 340 U. S. 135.[6]

Moreover, Congress has provided an adequate substitute which can give to the unjustly convicted serviceman the redress which the Unjust Conviction Statute accords to those tried by civilian courts. Article 73 of the Uniform Code of Military Justice (Act of May 5, 1950, 64 Stat. 107, 132, 50 U. S. C. 660) provides for a petition for a new trial, within one year of approval of the sentence, to The Judge Advocate General on grounds of newly discovered evidence or fraud on the court; if relief is granted, there can be restored to the unjustly imprisoned serviceman all pay and allowances lost because of the erroneous conviction. Similarly, Article 75 (64 Stat. 132, 50 U. S. C. 662) establishes a broad power in the Secretaries of the Departments to restore convicted servicemen whose convictions have been set aside to all their rights, privileges, and property affected by the sentence, including, of course, back pay and allowances.[7]

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[6] A claim for false imprisonment cannot be brought under the Tort Claims Act. See 28 U. S. C. 2680 (h).

[7] In addition, Roberson, who was convicted prior to May 5, 1951 (the effective date of the Act of May 5, 1950), had available the special new trial procedure of Section 12 of the Act of May 5, 1950, 64 Stat. 147, 50 U. S. C. 740, providing that The Judge Advocate General is authorized "to grant a new trial, or to vacate a sentence, restore rights, privileges, and property affected by such sentence, and substitute for a dismissal, dishonorable discharge, or bad-conduct discharge" any other form of discharge. See also Ex. Ord. No. 10190,

Since loss of earnings during and because of imprisonment constitutes the primary portion of the damages under the Unjust Conviction Statute, it would be unnecessary and inappropriate to imply an alternative remedy for servicemen when Congress has so clearly provided for this situation within the military administrative process. Cf. *Feres* v. *United States,* 340 U. S. 135; *Johansen* v. *United States,* 343 U. S. 427.[8]

2. The second important question presented by the decision below relates to the determination of which are the "courts" empowered to issue the statutory Certificate of Innocence, if court-martial proceedings are covered at all. In granting the special right accorded by the Unjust Conviction Statute, Congress carefully limited its availability to those who are truly innocent and whose release or pardon is based on the merits of their clearances, rather than upon mere procedural defects. See H. Rep. No. 2299, 75th Cong., 3rd

15 Fed. Reg. 8711. This provision likewise restores to unjustly imprisoned servicemen all back pay lost because of the erroneous conviction.

[8] Relying on the District Court's interlocutory order in *McLean* (fn. 5, *supra*, p. 11) as the only judicial authority then available, a former Judge Advocate General issued a Certificate of Innocence under the Statute to Frank S. Cole. Cole's suit is now pending in the Court of Claims (No. 2–55), and the Government is defending on the ground that the Statute is wholly inapplicable.

It is the present position of the Judge Advocate General of the Army, as well as of the Judge Advocate Generals of the Navy and the Air Force, that the Statute does not apply at all to military convictions.

Sess., p. 2.[9] See, also, *United States* v. *Brunner*, 200 F. 2d 276 (C. A. 6); *Sinclair* v. *United States*, 109 F. Supp. 529 (Ct. Cl.), certiorari denied, 345 U. S. 974. Seeking to obtain this result, Congress divided the responsibility for ruling on a claim under the Statute. The task of determining whether the claimant is actually innocent is delegated to the court which has set aside his conviction, presumably because that tribunal can best determine the merits of his appeal for justice; the award of the damages suffered is made by the Court of Claims on basis of the other court's record or certificate. These fundamental purposes of compensating only the truly innocent and of relying on the determination of the tribunal which heard the merits are both nullified by the ruling below which accepts a certificate from a court having jurisdiction only for the purpose of *habeas corpus* proceedings.

A court which passes upon a petition for *habeas corpus* has no authority to consider the merits of a conviction. See *McNally* v. *Hill*, 293 U. S. 131, 136–39. Especially in the case of court-martial convictions, the *habeas corpus* court looks only to the jurisdiction of the tribunal which tried the defendant, in this case a Navy court-martial. *Burns* v. *Wilson*, 346 U. S. 137. In the language of the statute, it is not "the court setting aside

[9] The issuance of a certificate is discretionary with the district court even when the defendant has been acquitted by a jury. *Rigsbee* v. *United States*, 204 F. 2d 70 (C. A. D. C.).

or reversing such conviction" of the claimant "on the ground that he is not guilty of the offense of which he was convicted." 28 U. S. C. 2513 (a) (1), *supra,* p. 3. The ruling of a court issuing the writ of *habeas corpus* on behalf of a military defendant almost always involves procedural matters rather than the substantive merits of the conviction. Such a court is in no better position to assay the defendant's innocence than the Court of Claims, and certainly far less competent to do so than The Judge Advocate General or other authority within the military system. See *Cox* v. *United States,* 112 F. Supp. 494, 496 (N. D. Cal.) and cf. *Burns* v. *Wilson,* 346 U. S. 137.

The facts of this case exemplify the difficulties which can result if the certificate in court-martial cases is issued by a court whose only prior connection with the defendant was the granting of *habeas corpus* for jurisdictional or procedural defects. The charges upon which the claimant was originally tried by the Navy court-martial included "drunkenness" (R. 9, 30), which was a crime under Virginia law (Va. Code, Sec. 18–114 (1950 ed.)), whether or not he was subject to Navy Jurisdiction.[10]

Also, at the time *habeas corpus* was issued by the Illinois district court in December 1949, Roberson

[10] Section 2513 (a) (2) provides that claimant must show that the acts charged constituted no offense against the United States or any State, etc., *supra,* p. 3.

was being held for a second court-martial for desertion from the Navy, and the only issue before the district court was whether he was then being lawfully held *by the Navy.* But the district court's determination that he had been discharged from the Navy in 1947 did not mean, as the court below seems to have concluded (App., *infra,* pp. 3a, 10a, 11a–13a, 19a–21a), that his later unauthorized absence in 1949 "constituted no offense against the United States" (see fn. 10, *supra,* p. 16). For the record shows that even if he was not subject to *Navy* jurisdiction in 1949, he was clearly at that time absent from the *Air Force* (Tr. 24, 66–67), *supra,* pp. 6–7), an offense for which he was subsequently court-martialled and lawfully imprisoned (Tr. 28, 69, *supra,* p. 7). In these circumstances, the issuance of *habeas corpus* was in effect merely a ruling that he was then being held for trial by a service without authority over him; there was no adjudication of the claims of the Air Force. And the certificate of innocence did not go further than the issue of the *Navy's* competence, for the district court's opinion (App., *infra,* pp. 22a–23a) shows that no inquiry was made beyond a recognition of the writ previously granted. Thus, to the extent that the certificate covered, and the Court of Claims considered, Roberson's confinement by the Navy after 1948, no account has been taken of the requirement of Section 2513 (a) (2) (*supra,* p. 3) that the charges against the claimant must have

constituted no offense against the United States.[11] If the certificate had been issued by the proper military authority—assuming that the Statute applies—difficulties such as this would have been avoided or minimized.

3. The significance of the ruling below appears plainly from consideration of the large and continuing number of court-martial convictions together with the practical fact that the Court of Claims will, in all probability, become the sole forum for unjust conviction suits by servicemen.[12] This Court is aware, in general, of the numbers of cases heard annually by the military tribunals of the three services. Specifically, the Department of the Army informs us that during the years 1953–1954 there were 9,184 persons who were convicted by Army general courts-martial. Of this number, five were sentenced to death and all but 471 of the remainder were sentenced to confinement. In 22 of these cases, the findings and

[11] The district court's certificate refers to "confinement for eight months" (R. 10–11), *supra*, p. 8), but both Roberson and the Court of Claims have apparently considered this to be an adjudication of Roberson's innocence during both periods of detention by the Navy (see R. 3–4; Court of Claims' finding 8, App., *infra*, pp. 20a–21a; opinion, App., *infra*, pp. 19a–21a), and the court considered the confinement in 1949 in computing and awarding damages. At the very least, it was error to include the 1949 Navy detention and the Air Force detention as a ground for damages.

[12] Even if the district courts may also enforce the Unjust Conviction Statute—despite its reference to the Court of Claims (*supra*, p. 2)—it is unlikely that suit will be brought elsewhere if the decision below stands.

sentence were set aside and the charges dismissed upon administrative review; although 14 rehearings were ordered, only one man was acquitted on rehearing during that period. Thus, for the Army alone, the extension of the Unjust Conviction Statute to include military convictions could have meant that 23 claims (those convictions set aside on review and on rehearing) were potentially authorized under the Statute during those two years. Although no data has been obtained from the other branches of the armed forces, there is no reason to believe that a comparable number of claims would not have arisen in each of them, proportionate to their relative size. And the problem is, of course, a continuing one with a substantial increment of possible claimants each year.[13]

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[13] The court below also made a *sub silentio* decision that an action under the Unjust Conviction Statute survives the death of the injured party. Assuming, *arguendo*, that the certificate issued by the Illinois district court was valid, the claimant's death on July 28, 1954, came after an adjudication of his individual right to recover but before the damages had been judicially settled by the entry of judgment by the Court of Claims. At common law, actions for personal torts abate with the death of the plaintiff. *Almour* v. *Pace*, 193 F. 2d 699 (C. A. D. C.). Traditionally, suits for false imprisonment, in the absence of a survival statute, are included in the class of actions which do not survive the plaintiff's death. *Whitten* v. *Bennett*, 77 Fed. 271 (C. C. D. Conn.); *Ferguson* v. *Lambert*, Fed. Cas. No. 4739 (C. C. S. D. Ohio). The statute involved here does not indicate that the right survives a claimant's death; on the contrary, both the personal nature of the injury compensated and the language

CONCLUSION

It is respectfully submitted, therefore that this petition for a writ of certiorari should be granted.

SIMON E. SOBELOFF,
Solicitor General.

MAY 1955.

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of the Act suggest that the action dies with the claimant. The jurisdiction of the Court of Claims is established by 28 U. S. C. 1495 (*supra*, p. 2) for a suit "*by any person unjustly convicted.*" The act continues in 28 U. S. C. 2513 (a) (1) to provide that the person suing under section 1495 must prove that "*His conviction* has been reversed or set aside on the ground that *he is not guilty* * * *, or on new trial or rehearing *he was found not guilty* * * *, or that *he has been pardoned.*" Subsection (2) adds that the complainant must also prove that "*He did not commit* any of the acts charged or *his acts* * * * constituted no offense * * *, and *he did not* by misconduct or neglect cause or bring about *his own prosecution.*" [Emphasis added.] Nowhere does the statute provide that the claimant's assigns, heirs, administrator, or estate shall have any right to recover.

The question whether this action survived or abated upon Roberson's death was apparently decided by the Court of Claims by the entry of judgment *nunc pro tunc* as of a date prior to Roberson's death. See *supra* p. 10. However, the use of this procedural device does not eliminate the necessity for ruling on the substantive abatement question. Cf. *McGrath* v. *N. A. M.*, 344 U. S. 804 (judgment ordered vacated for failure to substitute though district court had ordered judgment *nunc pro tunc* as of time when named defendant held office). This issue has importance not only in the administration of the Unjust Conviction Statute but also in the application of private acts for relief in the Court of Claims.